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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

First supplementary reports due in 1992

Addendum

CANADA*

11 September 1992

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* For the initial report of Canada, see CAT/C/5/Add.15; for its consideration, see CAT/C/SR.32 and 33 and Official Records of the General Assembly, forty-fifth session, Supplement No. 44 (A/45/44), paras. 218-250.

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* Geographical order, from east to west.

INTRODUCTION

1. The United Nations *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* was ratified by Canada on June 24, 1987. This is Canada's second report under the Convention. It covers the period from April 1, 1988 to December 31, 1991. Part One outlines generally Canada's constitutional structure as it relates to the Convention and parts Two, Three and Four update from the first report the measures undertaken at the federal, provincial and territorial levels to give effect to the provisions of the Convention.

PART ONE: GENERAL INFORMATION

The constitutional structure of Canada — General

2. Canada is a federal state made up of ten provinces and two territories. Pursuant to the *Constitution Act, 1867* and amendments thereto, legislative powers are divided according to subject matter between the federal government and the ten provincial governments. For example, Canada's Constitution gives each province jurisdiction within its territory over the administration of justice, property and civil rights and hospitals. Examples of matters which fall under federal jurisdiction are criminal law and procedure in criminal matters, naturalization and aliens, and a residual power for the peace, order and good government of Canada.

3. Canada also has two territories in which the federal government has jurisdiction to exercise both federal and provincial government powers. However, the federal Parliament has delegated to the territories many of the powers enjoyed by the provincial legislatures.

4. Due to this division of powers, federal, provincial and territorial governments are all involved in the implementation of the provisions of the Convention against Torture. (Because the role of security personnel is especially important for the purposes of this Convention, a detailed explanation is given below on how the federal and provincial governments share responsibility in this area.)

5. In addition, on April 17, 1982, the *Canadian Charter of Rights and Freedoms* was incorporated into the Canadian Constitution by virtue of the *Constitution Act, 1982* (Appendix 1[1]). It guarantees a variety of fundamental freedoms and legal rights which were described in Canada's First Report under Part I and Part II, Article 2.

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1 The appendices mentioned in the report are available for consultation in the files of the United Nations Centre for Human Rights.

International law in Canada

6. In Canada, international treaty law is not automatically part of the law of the land. Rather, the provisions of a treaty must be incorporated into domestic law either by enactment of a statute giving the treaty the force of law, or by amendment of the domestic law, where necessary, to make it consistent with the treaty. The implementation of a treaty whose provisions come under the jurisdiction of one, or the other, or both levels of government, requires the intervention of the Canadian Parliament, the provincial legislatures and often as well, the territorial legislative assemblies.

7. Because the federal Parliament does not have the legislative power to give effect to all the obligations which Canada assumed towards the international community by ratifying the Convention, extended consultations were required between the federal and provincial governments, in which the latter undertook to ensure compliance with those provisions of the Convention falling within their exclusive legislative authority.

Canada's constitutional structure as it relates to security personnel

8. This section explains the constitutional responsibility as between the federal and provincial governments in Canada for security personnel.

The Royal Canadian Mounted Police

9. Responsibility for law enforcement in Canada is shared between the federal and provincial governments. The Royal Canadian Mounted Police (the RCMP), established by the *Royal Canadian Mounted Police Act*, is a federal police force and is authorized to enforce federal laws anywhere in Canada. However, as a federal police force, the RCMP cannot enforce provincial or municipal laws unless clearly authorized to do so by provincial legislation. This is because the provinces are responsible for the enforcement of all laws of general application within their geographical limits. With respect to criminal law, there is an overlap to the extent that the federal and provincial governments may enforce the *Criminal Code* which is federal law.

10. The two territories and all the provinces, except Ontario and Québec (which have established their own provincial police forces) have entered into contractual arrangements with the federal government whereby the RCMP acts as the provincial, and in some instances, municipal police force. In this role, the RCMP enforces provincial law, some municipal by-laws and the *Criminal Code*.

11. However, it is important to note that, as a matter of constitutional law, no provincial authority can intrude into the internal management of the RCMP, which remains with the RCMP Commissioner, who is in turn responsible to the federal Solicitor General. This means that the disciplining of RCMP members, whether they are acting in a federal or provincial policing capacity, is an exclusive federal responsibility.

Correctional services

12. The responsibility for adult corrections is shared by the federal government, the ten provincial governments and the two territorial governments so that Canada has, in effect, thirteen correctional systems. (Juvenile corrections, although governed by the federal *Young Offenders Act*, is administered solely by the provinces and territories.)

13. Under the *Constitution Act, 1867*, the federal government is authorised to establish and administer penitentiaries housing persons sentenced to prison terms of two years or longer. On the other hand, the provinces are responsible for the administration of correctional institutions housing persons sentenced to prison terms of less than two years as well as accused persons who have been refused bail and are awaiting trial.

14. The Correctional Service of Canada (the CSC) is the agency responsible for administering federal sentences (i.e. two years or longer). This responsibility includes both the management of institutions of various security levels and the supervision of offenders under conditional release from the institution.

PART TWO: MEASURES ADOPTED BY THE GOVERNMENT OF CANADA

Article 2

15. Canada's first report outlined a series of constitutional, legislative, regulatory and administrative measures directed at preventing torture. In addition to these provisions, two other developments should be noted. Firstly, section 7(3.71) of the *Criminal Code* (Appendix 2), which came into force on September 16, 1987, makes war crimes and crimes against humanity a criminal offence. Conduct which amounts to torture under the Convention may also constitute a crime against humanity or a war crime, depending on the circumstances, and therefore may also be punishable under this section of the *Criminal Code*. Under section 7(3.74), the defence of obedience to *de facto* authority is taken away.

16. Secondly, the acknowledgement by Canada that victims of armed conflicts should be protected from torture and other cruel treatment, as recognized in the Geneva Conventions of 12 August 1949, was further extended with the ratification by Canada on November 20, 1990 of the Protocols Additional to the Geneva Conventions of 12 August 1949. The commitment of Canada to comply with Additional Protocols I and II extends the protection of persons from torture and other cruel treatment in conflicts of both an international and non-international nature.

Article 3

17. On September 26, 1991, the Supreme Court of Canada determined that the return of two fugitives to the United States where the death penalty is available as a sanction, did not contravene the *Canadian Charter of Rights and Freedoms*. (See *Kindler v. Canada (Minister*

of Justice) and *Ng v. Canada (Minister of Justice)* attached as Appendix 3.) The cases arose because the Canadian Minister of Justice had not sought assurances from the United States, pursuant to section 25 of the *Extradition Act*, that capital punishment not be imposed on the fugitives.

18. The Court held that the law of extradition and its exercise by the Minister was subject to section 7 of the Charter: the right not to be deprived of life, liberty and security of the person except in accordance with the principles of fundamental justice. Moreover, extradition will offend section 7 if the imposition of the penalty by the foreign state would shock the Canadian conscience. The Court noted that torture is a penalty so outrageous to the Canadian community that surrender would always be unacceptable. As regards the availability of capital punishment in a requesting state, each case must be decided on its particular fact situation. In the circumstances presented to the Court, return of the fugitives to the United States did not violate section 7 of the Charter because the accused would be subject to a legal system which was the product of a democratic government and included the substantial protections of a bill of rights. Other considerations were the importance of maintaining effective extradition arrangements with other countries, the risk that Canada could become a safe haven for persons seeking to avoid punishment in the United States and the brutal and shocking nature of the crimes at issue.

19. The Court also held that the law of extradition and the Minister's acts pursuant to that law could not constitute cruel and unusual punishment under section 12 of the Canadian Charter. This was because the punishment to which the fugitives could ultimately be subject was not imposed by the Government of Canada, but by a foreign state. Thus, only section 7 of the Charter could be relied upon to challenge extradition orders.

Article 4

20. At the presentation of Canada's First Report, the Committee specifically enquired as to the legal consequences if a detainee died as a result of the application of force by a correctional officer. In this regard, section 25 of the *Criminal Code* states that if a peace officer (which includes correctional service members), acts on reasonable grounds, he or she may use as much force as necessary in administering or enforcing the law. Necessary force would not, of course, include torture. As well, under section 26 of the Code, "everyone who is authorized by law to use force is criminally responsible for any excess thereof according to the nature and quality of the act that constitutes the excess".

21. The Committee has also asked for statistics about prosecutions for torture under the *Criminal Code* in Canada. The Canadian Centre for Justice Statistics does not have records of convictions for specific offences under the *Criminal Code*. Although it appears that there have not been any prosecutions for torture, it is hard to determine this point definitively as prosecution of criminal offences falls within provincial jurisdiction.

Article 6

22. Canada's first report noted that the Operational Manual of the RCMP was in the process of being updated with respect to stateless persons. The Operational Manual now provides that if a person is stateless, he or she may contact the representative of the country in which he or she normally resides. (RCMP Operational Manual Chapter III.2, Appendix 4.)

Article 8

23. A multilateral agreement to which Canada is a party and which provides for the extradition of individuals for certain offences, operates as a binding arrangement for the purposes of the *Extradition Act*. This is so regardless of whether there is a treaty in force between Canada and the other State Party and regardless of whether the treaty has been expressly promulgated into law. Thus, the Convention Against Torture may be used by Canada as the basis for an extradition to another State Party.

Article 9

24. The *Mutual Legal Assistance in Criminal Matters Act* was proclaimed in force in Canada on October 1, 1988. The Act provides the legal framework for the implementation of treaties between Canada and other states for the purpose of fostering co-operation in the investigation and prosecution of crimes. The Act provides for five basic forms of assistance: (i) the gathering of evidence, including taking statements and testimony; (ii) the execution of search warrants; (iii) the temporary transfer of prisoners for the purpose of testifying or providing other assistance; (iv) the lending of exhibits; and (v) assistance with respect to proceeds of crime.

25. Since 1990, Canada has entered into treaties pursuant to the new Act on mutual legal assistance with the United States, Australia, the Bahamas, the United Kingdom, Mexico, Hong Kong and France. A treaty with the Netherlands came into force on May 1, 1992. Additional treaties with Switzerland, Austria, Portugal, Korea, Brazil and Germany are under negotiation.

Article 10

Royal Canadian Mounted Police

26. Every recruit to the RCMP receives training on the use of force in courses on the "Handling of Prisoners", "Interrogation Techniques", "Firearms Control" and "Criminal Law". The recruits are taught to be constantly aware of the RCMP's policy with respect to the use of force, which is based essentially on two fundamental principles:

1) the avoidance of force, if at all possible, in achieving the objectives of law enforcement; and

2) restraint, i.e. only as much force as is reasonable and necessary.

27. In response to Canada's ratification of the Convention against Torture and the resulting amendments to the *Criminal Code* creating a specific offence of torture, a session on torture was introduced in the course on "Criminal Law" under the topic of "Arrest, Release and Detention".

28. Recruits also receive training on the *Canadian Charter of Rights and Freedoms*. Particular emphasis is placed on the legal rights provided in sections 7 to 14.

29. As well, in view of the importance of the resolution concerning the "Basic Principles on the Use of Force and Firearms by Law Enforcement Officials", which was adopted by the 8th United Nations Congress on the Prevention of Crime and the Treatment of Offenders in September 1990, and the resolution concerning the "Code of Conduct for Law Enforcement Officials", which was adopted by the United Nations General Assembly in 1979, Canada will publish a booklet containing both instruments, together with a commentary on each of them. The booklet will be distributed to law enforcement officials and interested individuals and organizations, as an important step towards effective implementation of these instruments.

Correctional Service of Canada

30. All employees of the CSC receive orientation and refresher courses dealing with the prohibition of torture and similar acts, including training on the policy and application of the use of force. It is important to note that these courses emphasize CSC's pervasive policy, the duty to act fairly.

31. Employees are instructed on the interpretation and application of those provisions of the *Criminal Code* and of CSC Directives, Standards and Guidelines which relate to the use of force, for example, in the context of courses such as arrest, control and the use of weapons and chemical agents (see CD 605, Appendix 5). As well, they receive training in the interpretation and application of legislation which prohibits torture and other cruel, inhuman or degrading punishment (e.g. the *Canadian Charter of Rights and Freedoms* and the *Canadian Human Rights Act*).

32. The duration of orientation training ranges between one week for staff with no contact with offenders to twelve weeks for correctional officers. Medical officers receive eight weeks training. Refresher courses are offered on a regular basis.

Other

33. The Canadian Centre for Victims of Torture (the CCVT) was established in 1983 to respond to the unique needs of torture victims and their families and to increase public awareness in Canada and abroad of torture and its effects in Canada. The federal government contributes to the funding of the CCVT through the Immigrant Settlement and Adaptation Program and the Settlement Language Program. The numerous activities of the CCVT include the conduct of training programs for visa officers and newly-appointed members of the Immigration and Refugee Board regarding the practice of torture, its effects on its victims and how it is manifested in victims.

Article 13

Royal Canadian Mounted Police

34. An *Act to amend the Royal Canadian Mounted Police Act*, proclaimed in force in 1988, establishes a procedure by which a member of the public may submit a complaint regarding the on-duty conduct of RCMP officers. It also establishes the Public Complaints Commission (PCC) which is independent of the RCMP. The aim of this procedure is to ensure that members of the public will have their complaints fairly and impartially dealt with, and that in examining complaints, the public interest in the fair and proper enforcement of the law will be taken into account. A description of each step of the complaint process is outlined in Appendix 6.

35. The Public Complaints Commission has held five hearings since January of 1990, which dealt primarily with the issue of "excessive force". Four of the hearings dealt with the use of force on arrest and one dealt with the use of force while the complainant was in custody. In three of the cases, the Commission found that, in fact, excessive force had been used. In one case, the Commission concluded that the complaint was unfounded and the other case is still pending. As a result of the Commission's recommendations in these cases, the RCMP has initiated reviews of its policies and training on the use of force in specific areas.

Correctional Service of Canada

36. All inmates have the following rights, in accordance with Commissioner's Directives (CD):

- to access to the grievance procedure of their institution (CD 081, Appendix 7);
- to make complaints to the Correctional investigator (CD 081, Appendix 7, paragraph 38);
- to use privileged correspondence to communicate with designated officials (CD 085, Appendix 8);
- to an opportunity for confidential communication with a lawyer (CD 084, Appendix 9).

37. For a description of the grievances and complaints procedure see pages 10-11 of "Inmate Rights and Responsibilities", attached as Appendix 10.

Article 14

38. During the review of Canada's initial report, the Committee sought clarification on whether a victim is guaranteed compensation in cases where a perpetrator is acquitted due to lack of evidence. Compensation from the provincial criminal injuries compensation boards is

not dependant upon conviction and therefore a victim may still be entitled to compensation where the accused has been acquitted.

39. As regards rehabilitation of victims of torture, reference was made in Article 10 to the Canadian Centre for Victims of Torture (CCVT) located in Toronto. Its activities include a referral service for victims of torture to a specially co-ordinated network of experienced physicians, psychiatrists and other specialists, an English-language training program specially designed for victims of torture and a community support program through a network of volunteers. A report outlining the activities of the CCVT in greater detail is attached as Appendix 11.

40. The Canadian Association for the Survivors of Torture conducts similar programs in Vancouver.

Article 16

41. As indicated in Canada's First Report, the Supreme Court of Canada has found that the protection against cruel and unusual treatment or punishment in section 12 of the Charter is violated by conduct so excessive as to outrage standards of decency. In *R. v. Luxton*, the Court held that a mandatory sentence of life imprisonment with no parole eligibility for 25 years for first degree murder (i.e. planned and deliberate) did not infringe section 12 of the Charter. The mandatory sentence, according to the Court, was deservedly severe reflecting the fact that first degree murder is the most serious crime in the criminal law and encompasses the most serious level of blameworthiness.

42. In *R. v. Goltz*, the Court also held that section 12 was not violated by a mandatory seven-day term of imprisonment for knowingly driving a motor vehicle while prohibited. Factors influencing the Court's conclusion were that the accused had to "knowingly" commit the offence, the need to protect public safety, and the fact that the prior order prohibiting someone from driving was subject to numerous safeguards.

PART THREE: MEASURES ADOPTED BY THE GOVERNMENTS OF THE PROVINCES[2]

1. NEWFOUNDLAND

43. This submission will update to December 1991 the information contained in Canada's first report.

44. The Division of Youth Corrections, Department of Social Services, has undertaken a major initiative on policy development which is relevant to articles 10, 11 and 13 of the Convention.

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[2] Geographical order, from east to west.

Article 10

45. A number of staff members have been trained to teach a course in non-violent crisis intervention. This course is compulsory for all staff at the residential care facilities for youth. Other supplementary training initiatives are also available. Those that are not mandatory are given broad support by the Division of Youth Corrections and the Department.

Article 11

46. The secure custody facility is being relocated to a modern facility containing such resources as a gymnasium and tennis courts, science and computer labs and autobody and metal working shops which were not previously available for the resident youth.

Article 13

47. The Youth Corrections Policy Manual sets out processes that are triggered where an allegation of abuse or unfair treatment is made by a resident against a staff member or against another resident. If the allegation involves a staff member, that person would be reassigned to duties removed from care of the residents pending an investigation. An internal investigation would always be undertaken. In addition, if the youth is under sixteen years of age, the matter would be referred to Child Welfare for an independent investigation by that Division. Where the investigation raises the possibility of criminal charges, the matter would be referred to the police who would also undertake an independent investigation. Finally, depending on the nature of the allegation, the young person would be assisted in contacting a lawyer, a social worker or an agency such as the Human Rights Commission.

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2. PRINCE EDWARD ISLAND

Part I — Information on new measures and new developments relating to the implementation of the Convention

48. Although there is a new *Correctional Services Act* in planning to replace the current *Jails Act*, R.S.P.E.I. 1988, c. J-1, which was referred to in our last report, there are no new developments during the period since Canada's first report, which are relevant to the implementation of the Convention.

49. In Prince Edward Island, correctional officers are expected to have basic correctional officer training and/or related experience before being hired. Correctional officer training is now being offered by the Justice Institute at Holland College in Charlottetown, Prince Edward Island, and includes training on and exposure to material on inmate rights, handling inmates, restraint and the use of force, etc. Upon hiring, the correctional officer is provided with an introductory pre-employment orientation and ongoing on-the-job training is provided.

50. Municipal police hired in Prince Edward Island are now expected to be graduates of the 40-week training program at the Atlantic Police Academy, which includes 15 weeks of

on-the-job training, or they are expected to have the equivalent training acquired elsewhere. Included in this training is the proper use of authority, use of force, prisoner rights and other similar issues.

Part II — Additional information requested by the Committee

51. What follows are statistics on the population of the provincial correctional centres in Prince Edward Island for four years from 1988 to 1991. The initial column provides information with regards to persons on temporary lock-up (police arrestees held prior to court appearances, federal parole violators, immigration detainees). The second column reflects those persons being held in provincial correctional centres on court-ordered remand pending trial. The third column represents those individuals in provincial correctional centres following sentencing by a court. The first number in each column is the number of persons who have been in a provincial correctional centre during that year in the particular category. The second figure is the number of hours that those individuals spent within a provincial correctional centre.

Prison Population

Year	Lock Up	Remand	Sentence
1988	1696/1791	114/2789	1430/26140
1989	1529/1691	127/3096	1301/27920
1990	1750/1776	183/4548	1344/32186
1991	2077/2158	188/5319	1318/31795

52. There have been no prosecutions in Prince Edward Island during the reporting period based on the torture offences introduced in the *Criminal Code*.

3. NOVA SCOTIA

Article 2

53. The procedure for admission to, and care of, patients in mental institutions is governed by the *Hospitals Act*, R.S.N.S. 1989, c. 208.

Article 10

54. With regard to the Correctional Services staff, the Solicitor General's Department provides a mandatory basic training course for all correctional officers as well as specialized training in non-violent crisis intervention, verbal crisis intervention, suicide intervention, staff-offender relations and introduction to corrections law.

Article 11

55. The Solicitor General's Department is in the process of issuing standards to all police departments in the province of Nova Scotia. These, along with relevant policies and procedures, are designed to ensure consistent practice on the part of all police officers in Nova Scotia. A policies and procedures manual issued January 31, 1991 was provided to all correctional centres in the province of Nova Scotia.

Article 13

56. The *Ombudsman Act*, R.S.N.S. 1989, c. 327, provides for any person in custody for a charge or after any conviction of any offense or by any inmate or patient of a mental hospital to complain in private or in writing on any matter.

57. Under the Act, the Ombudsman has legislative authority to investigate any allegation made by any person and to report to the authorities or to the public as seen fit.

58. In 1991, the Ombudsman's office placed an information poster in all correctional centres in the province inviting inmates to contact them with any complaint. Although the number of complaints increased from 30 in 1990 to 52 in 1991, the investigation findings did not show any wrongdoing on the part of the corrections staff.

Article 16

59. Regulations passed pursuant to the *Police Act* set out a procedure by which members of the public may make a formal complaint concerning the actions of a police officer. An appeal may also be made to an independent Police Review Board.

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4. NEW BRUNSWICK

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60. This report will outline changes made since the initial report and provide additional information regarding New Brunswick's adherence to the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.*

61. New Brunswick is committed to the principles of the Convention against Torture and implementing fully its provisions within its jurisdiction.

Article 2

62. Nothing whatsoever in the laws, regulations and policies of New Brunswick justifies the use of torture. No official or agency of New Brunswick is entitled or authorized to use torture or to justify its use.

63. The enforcement of the federal *Criminal Code* is the joint responsibility of the Department of Justice/Attorney General and the Department of the Solicitor General. The

Department of Justice/Attorney General has authority over public prosecutions, government legal services and law reform. The Department of the Solicitor General governs policing and correctional services.

Article 10

64. In May 1991, amendments to the *Police Act*, R.S.N.B. 1973, c. P-9.2, were enacted changing the mandate of the New Brunswick Police Commission. The jurisdiction of the New Brunswick Police Commission is restricted to the following:

> (a) the investigation and determination of complaints by any person relating to the conduct of a member of a municipal police force;
>
> (b) the investigation and determination of any matter relating to any aspect of policing in New Brunswick; and
>
> (c) the determination of the adequacy of municipal, regional and Royal Canadian Mounted Police (RCMP) police forces in New Brunswick.

65. Primary authority over policing has been transferred from the New Brunswick Police Commission to the Solicitor General. The functions of the Solicitor General are twofold:

> (a) to promote the preservation of the peace, the prevention of crime, the efficiency of police services and the development of effective policing services; and
>
> (b) to co-ordinate the work and efforts of municipal and regional police forces and the RCMP, and to discharge the role assigned to the Solicitor General in relation to the RCMP by the terms of the Provincial Policing Agreement between the Government of Canada and the Government of New Brunswick.

66. Under the *Police Act*, the Solicitor General has the authority to issue guidelines and directives to any police force within New Brunswick. Uniform policing standards are currently being developed by the Department of the Solicitor General.

Article 11

67. Section 21 of *Regulation 84-257* of the *Corrections Act*, R.S.N.B. 1973, c. c-26, states that no officer or employee under the Act is permitted to use force against an inmate, except within limited circumstances. In such circumstances, the force used must be "reasonable and not excessive having regard to the nature of the threat posed by the inmate and all other circumstances of the case".

68. Article 11 of the Convention against Torture requires, among other things, that the procedures governing arrests must be made with a view to preventing torture. With this in mind, sections 7 and 10 of the *Canadian Charter of Rights and Freedoms* are applicable to the extent that they outline certain minimum guidelines for arrests. Paragraphs 10(*a*) and 10(*b*) of the Charter require that every person upon arrest or detention be informed promptly of the reasons for the arrest or detention and be advised of the right to retain and instruct counsel

without delay. Section 7 of the Charter, which guarantees to everyone the right to life, liberty and security of the person, has been interpreted by the Supreme Court of Canada in the 1990 decision of *R. v. Hebert*, as constitutionalizing the common law right of pre-trial silence. As a result of the Charter, the "police warning" referred to in paragraph 92 of Canada's initial report on the Convention against Torture, is no longer applicable. The following is the warning now given in New Brunswick:

1. **NOTICE UPON ARREST**

I am arresting you for _____

2. **RIGHT TO COUNSEL**

Before you say anything, it is my duty to inform you that you have the right to retain and instruct counsel without delay.

Do you understand?

If the lawyer of your choice is not available within a reasonable time or if you cannot afford a lawyer, you have the right to free and immediate advice from Legal Aid duty counsel who is a lawyer.

Do you understand?

What do you want to do about your right to a lawyer?

CAUTION

You need not say anything. You have nothing to hope from any promise or favour and nothing to fear from any threat whether or not you say anything. Anything you do say may be used as evidence.

SECONDARY CAUTION

You must understand that anything said to you previously should not influence you nor make you feel compelled to say anything at this time. Whatever you felt influenced or compelled to say earlier you're not obliged to repeat, nor are you obliged to say anything further, but whatever you do say may be given in evidence. Do you understand what has been said to you?

Article 12

69. The New Brunswick Ombudsman is appointed by the New Brunswick Legislative Assembly and is granted authority under the *Ombudsman Act*, R.S.N.B. 1973, c. O-5, to investigate complaints against administrative decisions and acts of officials of the Government of New Brunswick, including any of its agencies, associations or municipalities. The services of the Ombudsman are offered without charge.

70. The *Police Act* outlines procedures for public complaints to the New Brunswick Police Commission. There are two types of complaints: (a) those which relate to any aspect of policing within New Brunswick [s. 22(1)]; and (b) those which relate to the conduct of a member of a police force, including the police chief [s. 26]. Public complaints concerning the conduct of members of the RCMP are not within the jurisdiction of the New Brunswick Police Commission but rather, within the jurisdiction of the Government of Canada.

Article 14

71. The *Compensation for Victims of Crime Act*, R.S.N.B. 1973, c. C-14, permits the following individuals to make an application for compensation:

> (a) where the victim is killed, an application may be made by a person who was responsible for the maintenance of the victim at the time of or at any time after the injury resulting in death, dependants of the victim and persons responsible for the maintenance of the dependants of the victim at the time of or at any time after the injury resulting in death [s. 4(2)]; and
>
> (b) in all other cases, a claim for compensation may be advanced by both the victim and any other person responsible for the maintenance of the victim at the time of or at any time after the injury or loss of or damage to property.

72. Compensation may be awarded for: reasonable expenses incurred or likely to be incurred as a result of the victim's injury or death; pecuniary loss resulting from disability which affects the victim's capacity to work; pecuniary loss to dependants resulting from the victim's death; pain and suffering, where the award is for the benefit of a victim; loss of or damage to property on the victim's person where the award is for the benefit of the victim; and loss of or damage to property, where the loss or damage occurs in one of the following circumstances: during or resulting from lawful arrest or attempted lawful arrest, prevention or attempted prevention of the commission of an offence, or rendering assistance to a peace officer.

73. Applications for an order of compensation under the Act may be made to a judge of the Court of Queen's Bench of New Brunswick or, with the consent of the Solicitor General, to any judge designated by the consent of the Solicitor General.

Article 15

74. In addition to the provisions of the federal *Criminal Code*, which prevents the admissibility of evidence obtained as a result of the use of torture, the policies and guidelines of New Brunswick provide that every person shall be read the warning outline under Article 11.

Article 16

75. The Corrections Branch of the Department of the Solicitor General has conducted an extensive review of its institutional policies and procedures with the intent of examining the

fundamental rights and freedoms retained by inmates (voting rights, association and expression rights and the freedom of religion) and the fairness of internal decision-making procedures (search and seizure, administrative segregation, inmate transfers and disciplinary procedures). As a result of this review, amendments are forthcoming to the internal administrative policies and directives of the Department of the Solicitor General and to the *Corrections Act*, R.S.N.B. 1973, c. C-26, and *General Regulation - Corrections Act.*

76. The *Human Rights Act*, R.S.N.B., c. H-11, protects employees against prescribed forms of discrimination including sexual harassment.

77. The *Family Services Act*, R.S.N.B. 1973, c. F-2.2(1980), outlines a comprehensive regime for the protection of children. All aspects of the welfare of children are provided for in the Act and include the mental, emotional and physical health of a child, a secure environment for a child, the protection of a child's cultural and religious heritage and a recognition of a child's views and preferences.

ATTACHED DOCUMENTS[3]

Compensation for Victims of Crime Act, R.S.N.B. 1973, c. C-14 and Regulation 83-86

Corrections Act, R.S.N.B. 1973, c. C-26 and Regulation 84-257

Excerpts from An Act Respecting the Provincial Offences Procedure Act, Chapter 22, Assented to June 20, 1990:

- Amendments to the Corrections Act
- Amendment to the Habeas Corpus Act

Habeas Corpus Act, R.S.N.B. 1973, c. H-1 and Regulation 84-62

An Act to Amend the Habeas Corpus Act, c. 25, June 16, 1977

Ombudsman Act, R.S.N.B. 1973, c. O-5

Know Your Ombudsman (pamphlet)

Police Act, R.S.N.B. 1973, c. P-9.2, amendments, and Regulations 81-18, 86-49, 86-76 and 91-119

Annual Report 1990-1991, New Brunswick Police Commission

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[3] These documents are submitted separately as reference material.

5. QUÉBEC

78. The Government of Québec has undertaken to comply with the provisions of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* with the adoption, on June 10, 1987, of decree no. 912-87, in compliance with its internal law.

79. This report updates to December 31, 1991 the information contained in the Initial Report of Canada on the application of the said Convention.

80. According to Québec's *Charter of Human Rights and Freedoms*, enacted by the National Assembly in 1975, "Every human being has a right to life, and to personal security, inviolability and freedom". Legislative and administrative measures have been taken on the basis of this fundamental provision to ensure compliance with the provisions of the Convention in legislative matters.

LEGISLATION

81. Québec's legislation contains no provisions that might be considered inconsistent with the fundamental rights enshrined in the Convention.

82. In civil matters, Québec has carried out a major reform of its legislation which led to the *Civil Code of Québec*, S.Q. 1991, c. 64, being assented to on December 18, 1991. Article 2858 of this Code contains a new rule of evidence: "The Court shall, even of its own motion, reject any evidence obtained under such circumstances that fundamental rights and freedoms are breached and that its use would tend to bring the administration of justice into disrepute." This provision will have the dual effect of promoting the aims of the Convention while ensuring that the right to the integrity of the person cannot be infringed because the law is silent.

83. It should be noted that in criminal matters, article 61 of the *Code of Penal Procedure* (R.S.Q., c. C-25.1) provides that "The rules of evidence in criminal matters, including the *Canada Evidence Act*, R.S.C. 1985, c. C-5, apply..." This provision came into force on October 1, 1990. Under article 231 of this Code, which came into force at the same time, except as otherwise prescribed in the Code and except in the case of contempt of court, imprisonment cannot be prescribed for offences under the statutes of Québec.

CORRECTIONAL SYSTEM

84. In 1990-91, 74,465 entries were registered in the Québec's detention facilities system. Of this number, 52,956 were admissions and 21,509 were transfers. Thus, the average daily registered population was 4133.9 people, or 1223.2 accused and 2910.7 inmates.

85. The staff of the detention facilities system is given a comprehensive training, centred on respect for individuals and their rights. No accusations have been made so far against staff members working in the system in terms of the *Criminal Code*'s provisions on torture.

86. Each facility has a system for processing any complaints that might arise, which can, if necessary, result in the intervention of the Detention Branch of the Department of Public Security. Incarcerated persons may also lay a complaint with the Ombudsman (Protecteur du citoyen) or with the Québec Human Rights Commission. These remedies in no way preclude their appealing to the regular courts if they believe their rights have been infringed.

POLICE

87. A major police reform launched in December 1988 in Québec resulted in the adoption of a uniform code of conduct for all police and in the creation of two new separate tribunals to ensure compliance with the Code: the commissioner for police ethics and the committee on police ethics. This reform became effective on September 1, 1990.

88. The police code of ethics applies to all police officers in Québec, with the exception of members of the Royal Canadian Mounted Police working in Québec, who come under the Canadian federal government. This code seeks to ensure better protection for the citizen by encouraging police officers to develop high standards of service to the public and conscientiousness in the performance of their duties while respecting individuals' rights and freedoms. It sets out the duties and standards of conduct that the police are to follow in their relations with the public.

89. In the past, citizens who considered that they had suffered from police conduct could address their complaints to the appropriate police force or to the Québec Police Commission, but now only the commissioner for police ethics is authorized to receive such complaints. The complainant and the police officer involved, and his/her superior, are kept informed of the progress of the complaint. If the complaint is dismissed, the complainant can ask to have that decision reviewed by the committee on police ethics. Depending on the gravity of the act complained of, the commissioner can also summon the police officer to appear before the committee on police ethics or hand the case over to the Attorney General to assess the advisability of a criminal prosecution.

90. The Committee on police ethics, composed of a chairperson and three vice-chairpersons, all of whom are lawyers with at least ten years at the Bar, have jurisdiction to dispose of any case brought by the commissioner and any request for review made by the complainant. The committee, whose hearings are, with some exceptions, public, is generally composed of a three-member panel consisting of a lawyer, a police officer and a person who is neither a lawyer nor a police officer. Any final decision by the committee may be appealed to one of Québec's regular courts. The decision of the judge of that court is final and cannot be appealed or submitted to arbitration.

91. In addition, the Department of Public Security has adopted a policy for police investigations in cases involving a police officer or a police force. According to this policy, when a person dies in the course of some police action, the investigation is entrusted to a police force other than the one involved.

92. Training of police officers in Québec takes place at the Police Institute. During their training at the Institute, all trainees are evaluated on their skills and ability to put into practice their professional knowledge while respecting fundamental human rights, at all stages of the actions undertaken by the police: arrest, detention, imprisonment, search and investigation.

93. Also, the training given by the Institute in the use of force is based on the practical and technical aspects of police intervention in the legislative and regulatory context in keeping with the legal guarantees enshrined in the Canadian and Québec Charters of Rights.

94. Since the publication of the initial report, a complementary administrative measure has been adopted. The police are regularly informed of the techniques and the legal restrictions on the use of force and of the responsibilities of peace officers.

6. ONTARIO

95. The Government of Ontario, having continued to review its legislation, programs, policies and practices since Canada's first report, is satisfied that they continue to be in compliance with the Convention. The information provided here is an update to the first report.

Part I — New measures and developments

Article 2

96. The *Police Services Act* of Ontario was proclaimed in force in 1990. The Act governs all police forces in Ontario. Among the principles declared in the Act are the need to ensure the safety and security of all persons in Ontario and the need to safeguard the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms* and Ontario's *Human Rights Code, 1981.*

97. The employees of the Ministry of Correctional Services are subject to the provisions of the *Criminal Code* which deal with the use of force in the administration of their duties.

Article 10

98. Staff in the Young Offender residential system of the Ministry of Community and Social Services receive training in crisis intervention and in the prevention and management of aggressive behaviour.

Article 11

99. A major initiative of the Ministry of the Solicitor General has been the development of standards or guidelines governing police practices.

100. These standards and guidelines specify, *inter alia*, that when persons are in police custody:

(a) all accommodation must be adequately monitored, safe, secure, adequately heated, lit and ventilated, equipped with a bunk and sanitary toilet facilities;

(b) immediate medical attention must be obtained for unconscious prisoners or prisoners who appear ill or injured and in obvious need of medical assistance (Special care is exercised with prisoners who are known to be or suspected of being mentally ill or suicidal. Prisoners are fed at regular meal times.);

(c) they have the basic rights to retain a lawyer and privacy to discuss their case with a lawyer;

(d) searches are conducted with due consideration to possible embarrassment of the subject of the search and, under normal circumstances, persons are searched by an officer of the same sex.

101. The Ministry of Correctional Services is continually reviewing and updating policies and procedures relating to the treatment of adult inmates and young persons. The Ministry provides custody and detention facilities for 16- and 17-year old young people. These correctional facilities are closely monitored by the Ministry.

102. All young persons detained or in custody in facilities of the Ministry of Community and Social Services are advised of the existence and functions of the Office of Child and Family Services Advocacy and of their right to communicate with the Office in confidence.

103. In 1990, that Ministry reviewed all existing safeguards for children in residential care. A report containing 65 recommendations is now being used to ensure the safety of resident children and youth.

Article 12

104. Under the guidelines established by the Ministry of the Solicitor General, the Chief of Police/Commissioner of the Ontario Provincial Police examines every instance where force has been used. Further, a Special Investigations Unit, created pursuant to the *Police Services Act*, investigates incidents involving police where a serious injury or death has occurred that may have resulted from criminal offences committed by police officers. Following the investigation, the Director of the Unit determines whether there are reasonable and probable grounds to lay a criminal charge. If a charge is laid, it is dealt with by the criminal courts in the usual manner.

105. The Ministry of Correctional Services has a mechanism for the formal investigation of situations involving the use of force.

106. The Ministry of Community and Social Services staff must report any suspicion that a child is, or may be, suffering abuse, including children in the Ministry's Young Offenders residential facilities.

Article 13

107. The new *Police Services Act* contains measures for civilian involvement in both the complaints and investigations process. One such measure is the establishment of a public complaints system headed by a civilian complaints commissioner and administered by the Ministry of the Attorney General.

108. A complaints procedure exists for young persons in residential programs operated by the Ministry of Correctional Services.

Article 16

109. As a result of the 1991 Ontario Court of Appeal decision in *Flemming v. Reid & Gallagher*, there can no longer be involuntary treatment if the patient refused treatment when he or she was competent.

110. The *Ministry of Correctional Services Act* prohibits corporal punishment of any child receiving services under that Act.

111. A psychiatric patient who is over 16 and incompetent has the right to apply to a Review Board in order to have a representative appointed to make treatment decisions. The *Mental Health Act* contains provisions which outline when restraint may be applied, and the circumstances must be documented on the clinical record. All provincial psychiatric hospitals have policies respecting the reporting of allegations of patient abuse. Psychiatric patients in provincial psychiatric hospitals have access to a patient advocate who may pursue any complaint or concern brought forward by a patient.

Part II — Additional information requested by the Committee

112. Concerning the issue of the training of medical personnel to deal with incidents of mistreatment and torture within institutions governed by the Ministry of Correctional Services, medical personnel familiarize themselves with the policies and procedures of the Ministry. When required, medical staff administer immediate medical intervention to inmates. When appropriate, medical staff report injuries and ailments to the superintendent and/or the Senior Medical Consultant for the Ministry.

113. Within the Ministry of Health, all psychiatric hospitals have policies respecting the reporting of allegations of patient abuse. Staff of the institutions are expected to familiarize themselves with the policies and procedures, and are required to report allegations of incidents to their immediate supervisor who will take the necessary steps to respond to the allegation.

114. Concerning the issue of compensation for victims, section 5 of the *Compensation for Victims of Crime Act* of Ontario provides for compensation when the victim has been injured or killed as a result of a criminal act of violence in Ontario.

7. MANITOBA

Article 2

115. Manitoba Justice is now responsible for the administration of the *Criminal Code* (including provisions against torture) in Manitoba, as well as the administration of *The Corrections Act.*

116. *The Corrections Act* has been re-enacted as R.S.M. 1988, c. C230. Section 34 now authorizes the superintendent of a correctional institution to make rules respecting conduct, and section 36 authorizes regulations respecting the conduct and duties of officers/employees of correctional institutions, training for such staff, and the general welfare and care of inmates. Policies are in place on the use of force by staff.

117. Youth custody institutions have policies on use of force by staff, physical and sexual abuse reporting, access for grievances by residents of youth custody facilities, reporting of incidents of use of force, and other issues related to cruel, inhuman, or degrading treatment or punishment. Open custody homes located in the community are licensed by the Minister of Justice and must meet prescribed conditions, including the operator's personal compatibility with the appropriate treatment of youth.

Article 10

118. Persons involved in the custody, interrogation or treatment of individuals subject to arrest, detention or imprisonment continue to be provided with general information regarding the obligations arising from their duties, in the context of this Convention. Youth custody staff are trained in crisis prevention and the use of non-physical as well as physical restraint techniques. Adult Corrections has staff training courses in dynamic security, conflict resolution and positive discipline.

Article 11

119. Both Adult Corrections and Community and Youth Corrections conduct comprehensive regular operational reviews of policy and practice in their operational units. Evaluative reports coming from these reviews contribute to strategic planning.

Article 12

120. Inquiries are required under section 7(5) of *The Fatality Inquiries Act*, S.M. 1989-90, c. 30(F52) where a person died while in the custody of a peace officer, or while a resident of a correctional institution, jail, prison, military guardroom or in an institution to which *The*

Mental Health Act applies, or in unexplained or unexpected circumstances. Where warranted, full investigation and report shall follow an inquiry. Under section 19(3), where as a result of an investigation there are reasonable grounds to believe that there was a violent, negligent or unexplained death of an inmate in a correctional facility or an involuntary resident of a mental institution, or that a person died at the hands of a peace officer, the Chief Medical Examiner is required to direct a Provincial Judge to hold an inquest.

121. Adult Corrections routinely completes follow-up investigations of all unusual incidents (suicide, disturbances, etc.) in order to determine the facts and make recommendations regarding policy change and/or disciplinary action where warranted. Community and Youth Corrections has a protocol for a referral of allegations of physical or sexual abuse to investigative authorities. Each new staff, prior to recruitment, is investigated for suitability of personal background.

Article 13

122. Adult correctional facilities allow direct access, by mail/phone to the provincial Ombudsman, the Human Rights Commission, and the local media. Youth custody facilities' policy is to provide direct and unmonitored access by mail/telephone to the Ombudsman or the facility head, for any resident.

123. Section 15 of *The Ombudsman Act*, R.S.M. 1987, c. 045, permits the Ombudsman to investigate any act done or omitted relating to a matter of administration by a department or agency of government. This would permit persons in provincial jails and provincial institutions to make complaints to this official. The Ombudsman can also initiate his own inquiries. However, investigation is discretionary, and the Ombudsman's only remedial powers are to file reports and to make recommendations.

124. Under new provisions in *The Mental Health Act*, R.S.M., c. M110, a person admitted to psychiatric facilities must be informed: (a) where the person is being detained; (b) the reason for the detention; and (c) that the person has the right to retain and instruct counsel. Additionally, the person must be provided with a written communication outlining the functions of the review board, the manner in which an appeal can be referred to the board, and the right to send and receive mail, retain and instruct counsel, etc.

Article 14

125. On August 30, 1989, the schedules to *The Criminal Injuries Compensation Act*, R.S.M. 1987, c. C305, were amended by Order in Council 219/89 specifically to include the crimes of torture and illegal confinement as compensable offences. Compensation comes from government funds. Although no claims of such a nature have been made to date, if such an application was received, the victim would be provided the same entitlement to benefits as any other qualified victim.

126. *The Justice for Victims of Crime Act*, S.M. 1986-87, c. 280 (J40) establishes a Victims Assistance Committee to promote, among other things, provision of services for victims of

crime (including torture). There is also established a Victims Assistance Fund, from which Cabinet may authorize expenditures for the promotion and delivery of victims' services and research into victims' services, needs and concerns. The fund is not used to provide direct compensation to individual victims of crime.

Article 16

127. *The Human Rights Code* provides a means of recourse to any individual who has been subjected to unreasonable discrimination (including harassment) based on group characteristics such as race, religion, political belief, etc. In addition, provincial authorities are subject to Court review of their conduct, in the context of section 12 of the Charter, which prohibits cruel and unusual treatment or punishment. For example, in *R. v. Sawchuk* (unreported, June 24, 1991), the Manitoba Court of Appeal rejected an allegation that the pre-trial detention of a 23-year-old accused person who had the mental age of a 12-year-old amounted, under all the circumstances, to a violation of section 12.

128. Recent amendments to the *Criminal Code* have replaced the Lieutenant Governor's Advisory Board of Review with a Review Board, with the authority to review and make decisions with respect to mentally disordered offenders involved with the criminal law. The criteria considered are the need to protect the public from dangerous persons, the mental condition of the accused, the reintegration of the accused into society and the other needs of the accused.

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8. SASKATCHEWAN

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129. This report updates to January 1, 1992 the information contained in Canada's initial report on the Convention relative to Saskatchewan.

Article 13

(1) Complaints against police

130. *The Police Act, 1990* was proclaimed on January 1, 1991, replacing the existing *Police Act*. The Act puts into place new provisions for the handling of public complaints against members of the police force. An independent civilian investigator has been appointed whose duty is to inform, advise and assist complainants and to monitor and oversee the handling of public complaints. The investigation process must be conducted in a manner "consistent with the public interest", and is in addition to any civil or criminal proceedings which may be taken against a member of the police force.

131. Once the investigator has completed the investigation of the complaint, he or she shall provide the police chief with a written report and, where the investigator considers it advisable, may make the report available to the Chairperson of the Police Commission. The Act also provides for the informal resolution of public complaints, with the consent of the complainant.

132. Where warranted, the matter is referred to the Attorney General for prosecution or to the Police Commission for disciplinary action.

133. Where the investigation leads to disciplinary action, the Act provides for the suspension of the officer pending a disciplinary hearing. A hearing is held before a hearing officer designated by the Minister of Justice. The complainant is given notice of the hearing and the hearing is held in private unless the officer, the investigator, the complainant and the person prosecuting the complaint agree otherwise.

134. The penalties for disciplinary offences include: dismissal, demotion, suspension with or without pay, a fine up to $1000, a period of probation or close supervision, an order requiring the officer to undergo counselling, treatment or training, a reprimand or any other order the hearing officer deems fit.

135. An appeal of the hearing officer's order can be made, with permission, to the Police Commission.

(2) Young offenders in custody

136. The Department of Social Services, Young Offenders Branch, has a policy of requiring that lawyers/Ombudsman/investigators be given reasonable access to their young offender clients when requested. In addition, all young offenders are made aware of, and provided access to, legal aid services that are available. With certain restrictions, residents of custody facilities are given regular access to their immediate family and to others significant in their lives, subject to the approval of a unit supervisor. Telephone access to legal counsel, the Ombudsman and the police are given as requested during reasonable hours of the day.

137. In secure custody facilities, it is sometimes necessary to place a young offender under some form of physical restraint. Such restraints are routinely used to ensure safe escorts of high security residents outside secure areas of the institution and in the community. They may also be used in certain situations for purposes of internal security. However, this measure is subject to strict regulation and control. Physical restraints are not used on residents held in open custody.

138. Incidents involving an apparent or alleged assault of a young offender by a resident or staff are immediately reviewed by the custody facility director and, depending upon the outcome of this review, may be referred to police for investigation. Police referrals are mandatory whenever the alleged assault victims specifically request it. The facility director will refer a case on his/her own initiative when there are reasonable or probable grounds to believe a criminal assault may have occurred.

(3) Children in the care of the Province

139. *The Child and Family Services Act* requires that the Minister of Social Services be responsible for the expense of sheltering, supporting, educating and caring for children found to be in need of protection, during the period of custody or committal. In the case of children

in the care of the Minister, the Regional Director shall notify the Executive Director, Family Services Division, of a serious case incident within 24 hours of the incident to be followed by a written report. Serious case incidents include but are not limited to:

(a) the death of a child;
(b) the serious injury of a child; and
(c) allegations of sexual abuse of a child.

140. All complaints concerning abuse or neglect of children in care are to be investigated immediately and if the complaint includes information that an assault may have taken place, the matter is referred to the police for joint investigation.

Article 16

(1) Health care

141. Within the health field in Saskatchewan a number of legislated and policy requirements have been established which have the effect of ensuring that persons receiving health care are not subjected to cruel, inhuman or degrading treatment or punishment.

142. Regulations under *The Hospital Standards Act* stipulate that consent to surgery must be obtained from a patient by a hospital board before surgery can be carried out. As a general policy, hospital boards customarily obtain a general "consent to treatment" from all patients admitted to their facilities.

143. Section 25 of *The Mental Health Services Act* prohibits a physician or other person from administering psycho-surgery or experimental treatment to a patient admitted involuntarily to a mental health treatment facility. Other sections of the Act insure that mentally disordered persons who are involuntarily admitted, or their nearest relatives, are informed of their right to appeal the involuntary detention to a review panel or a court. In addition, all voluntary patients have access to independent advocacy services if they feel they are being unfairly treated. A policy of the Health Department's Home Care Branch requires that home care boards should ensure that the rights of patients are respected, that confidentiality of patient's records is maintained and that clients are aware of their right to appeal decisions about the services provided.

144. Program guidelines for special care homes in Saskatchewan state that residents are to receive considerate and respectful treatment and that residents are to receive protection from injury from any source to the extent that such injury can be anticipated. *The Personal Care Home Regulations* provide that every resident is to be free from any actions of a punitive nature, including physical punishment, threats of any kind, intimidation, verbal, mental or emotional abuse or confinement.

145. Guidelines have been established by the Medical Research Council of Canada to assist researchers and health care institutions in making ethical decisions about research activities involving human subjects. These guidelines deal with principles of informed consent,

evaluations of risk and benefit, confidentiality of information and the implementation of ethical responsibilities.

146. Codes of ethics have been established by professional associations of physicians, nurses, psychologists and social workers to guide such professions in their relationships with patients or clients. Such codes customarily oblige professionals to respect the dignity and decision-making authority of their patients/clients and to avoid unnecessary harm or injury.

(2) Corrections

147. The Corrections Division of the Department of Justice has initiated several new policies with respect to the treatment of inmates in provincial correctional centres. One of those is a policy which limits the release of an inmate's personal information. The benefits of and the right to leisure time activities for inmates is now formally recognized by the enunciation of principles and standards. The Corrections Division has also instituted guidelines for ensuring the provision of needs for persons with disabilities. This new policy seeks to ensure that the needs of inmates with disabilities are adequately met.

9. ALBERTA

Part I(a) (i) and (ii) — Article 16

148. A new policy has been introduced by the Department of Family and Social Services related to article 16. Under the new policy, corporal punishment of foster children will be completely prohibited by January 1, 1993. An interim policy will significantly restrict the use of corporal punishment of foster children under the protective care of the Department. The interim policy stipulates the limited circumstances in which corporal punishment may be used, and requires all incidents to be documented. The policy also requires foster parents to receive training in alternative disciplinary methods.

Part I(b) (i) — Articles 11, 12 and 13 and 16

149. A new *Mental Health Act* came into effect in 1990 which allows detention for examination and treatment of involuntary patients. However, the Act also sets up a system which requires the completion of admission and renewal certificates to hold a person. The longest time period for which a person can be held is six months, which requires a renewal certificate signed by two physicians, one of which must be a psychiatrist.

150. All involuntary patients must be informed of the reason they are being held and of their right to apply to a review panel for cancellation of a certificate. This information must also be given to the patient's guardian, nearest relative or other person designated by the patient.

151. The board of the facility must provide an interpreter if required and must assist the patient with the submission of an application to a review panel. The board or staff of a facility is not allowed to interfere with written communications to or from a patient.

152. The following two references are not new legislative developments but should have been included in the first report.

153. The *Public Health Act* allows for the detention of a person suspected of having a communicable disease for the purposes of examination and investigation. The person may only be held for 24 hours, unless an application to court is made to increase the time for not more than two periods of seven days each.

154. If a person is infected with certain communicable diseases (as defined in regulation) and refuses to comply with a physician's orders, the Medical Officer of Health may issue a certificate for the apprehension, detention and treatment of the person. However, the individual must be examined within 24 hours, informed of the reasons for his detention and be advised of his legal right to obtain counsel. The person must be released within seven days unless an isolation order is issued.

155. An isolation order requires the certification of two physicians, or one physician with a laboratory report as evidence, that the individual is infected with a certain disease and fails to comply with medical orders. The same information must be provided to persons under an isolation order as to those under a certificate.

156. Persons detained under a certificate or an isolation order can apply to the Court of Queen's Bench for cancellation of the certificate order.

157. The Solicitor General Department administers the *Police Act*, S.A. 1988, c. P-12.01, which sets out a complaint mechanism under Part V for the public. A complaint respecting a police service or a police officer may be laid which can proceed to the Law Enforcement Review Board, an independent tribunal which determines the validity of the complaint. If it is determined during the course of the complaint process that a criminal offence has occurred, the matter must be referred to the Attorney General to determine whether charges should be laid.

Part A(b) (ii)

158. There has been no new case law relevant to the implementation of the Convention.

Part A(b) (iii)

159. During 1990, the Law Enforcement Review Board disposed of 43 cases, none of which involved criminal offenses.

Part A(b) (iv)

160. No comment.

Part II — Information requested by the Committee during its consideration of Canada's first report

161. Statistics related to the number of state officials prosecuted for committing or authorizing acts of torture, or cruel, inhuman or degrading treatment or punishment are not available.

162. As part of their basic training program, correctional officers receive one day of training on human rights and limits to the use of force. Police officers receive up to two weeks training on the use of force and a half day of training on human rights.

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10. BRITISH COLUMBIA

The role of the provincial Ombudsman

163. As well as specific legislation and administrative measures carried out by individual ministries, the intent of this Convention is addressed in a comprehensive manner through the Office of the Ombudsman. Under the terms of the *Ombudsman Act*, R.S.B.C. 1979, c. 306, this agency investigates complaints by members of the public against public officials.

164. The Office of the Ombudsman deals with complaints from adult and youth correction centres and adult and youth mental treatment centres. To facilitate access to the Office by inmates of correctional or mental institutions, regular visits are made to these institutions. The attached extracts from the Ombudsman's annual report[4] document a number of cases related to alleged inmate or client abuse.

165. The Ombudsman also carries out studies of particular areas of the provincial government to ensure that procedures are organized to effectively respond to public concerns. A study was completed in 1986 with regard to police complaint procedures to clarify who should investigate and rule on public complaints against police officers. Revisions to the *Police Act* were passed in 1989 to ensure that an impartial authority, the Police Commission, had jurisdiction to investigate and resolve complaints from citizens.

Article 2: Legislative ... or other measures

166. The Ministry of Attorney General is responsible for enforcement of provincial statutory provisions and prosecution of offences under the *Criminal Code* of Canada. No provision in B.C. law or policy may be invoked as a justification for torture or other inhuman treatment. Specific legislation, policies and procedures are referenced below by program area.

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[4] These documents are submitted separately as reference material for the attention of the members of the Committee against Torture.

167. For police officers, standards of conduct are regulated by the *Police Act*, R.S.B.C. 1979, c. 331, as well as by a Discipline Code, included in Appendix A of B.C. Reg. 330/75 *Police (Discipline) Regulations*. Section 7(*b*) of the Code lists the following action as being subject to discipline: "any unnecessary violence to any prisoner or other person with whom he may be brought into contact in the execution of his duty".

168. For correction officers charged with custody of offenders, conduct is regulated by: the *Correction Act*, R.S.B.C. 1979, c. 70; a mission document entitled *Beliefs, Goals and Strategies* (B.C. Corrections Branch, Ministry of Attorney General, rev. May 1986); and specific procedures set out in the *Correctional Centre Rules and Regulations*, 1986. The latter rules and regulations specify in section 11 that physical restraint may only be used to prevent the inmate from injuring himself or others, in transporting inmates, or in preventing escapes, and use of restraining devices other than handcuffs or leg irons must be reported to superiors. Section 22 requires that searches are to be conducted with a minimum of force. Sections 35, 36, 37 and 38 outlines rules related to use of segregation cells, including an inmate's right to meals, exercise, and medical supervision.

169. The province's major long-stay in-patient facility for people with mental illness, Riverview Hospital, has a number of policies and procedures relating to the reporting and investigation of patient abuse. Policy number CR1-015 outlines the reporting and investigation of patient abuse and the right of the provincial Ombudsman to investigate charges of abuse and gain access to any records needed in the course of such an investigation.

170. Under the *Coroner's Act*, R.S.B.C. 1979, c. 68, a coroner is directed in section 10 to investigate all deaths which take place in a penitentiary, prison or while in the custody of a peace officer. Under section 52, a coroner may authorize a post mortem of any death in a hospital or institution at the request of the board of directors of that institution.

Article 10: Training of public officials

171. Training of police and correction officers is delivered by the Justice Institute in Vancouver, which reports to the Ministry of Attorney General. To supplement its core curriculum, the Institute has established a family assault and sexual violence training centre which focuses on the criminal justice aspects of this type of violence, with an emphasis on intervention and prevention.

Article 11: Interrogation rules and custody arrangements

172. Adequate protection for inmates of correctional centres is mandated by Part 2 of the document *Beliefs, Goals and Strategies*. It states in section 1 that "all persons must have their rights respected and be treated with dignity", and in section 12 that "offenders are members of society and are to be treated with respect and dignity and are not to be subjected to cruel and unusual forms of treatment". More detailed rules regarding treatment of inmates are provided in the *Correctional Centre Rules and Regulations*, which are currently under revision.

Articles 12 and 13: Complaints and investigation

173. For inmates of a provincial correctional centre, a grievance procedure is provided in section 40 of the *Correctional Centre Rules and Regulations*. Inmates can complain to specified officials, and also to the provincial Ombudsman. All such correspondence is considered to be private.

174. For mental patients at Riverview Hospital, a complaint can be made to any staff member or to a representative of the provincial Ombudsman's office, who visits Riverview Hospital on a weekly basis. An investigation must take place immediately, with a report completed within 48 hours. All significant allegations of abuse are to be referred by the Chief Executive Officer of the facility to an independent panel of inquiry appointed by the Minister of Health for possible further investigation. If the complaint is made directly to the Ombudsman's representative, that individual is to have access to all records required to make a full investigation. A volunteer support person can be made available to the patient who suffered the alleged abuse.

175. With regard to the Forensic Psychiatric Institute, where patients are held by court order ("some patients are held for less than 60 days while being assessed for the court; others, declared unfit to stand trial, remain until considered fit; still others remain until they are considered able to function safely in a community setting" - *Ombudsman 1990 Annual Report*), there is a Patients' Concerns Committee consisting of three staff members who play an important role in addressing patient issues.

176. For members of the public, a complaint of abuse against a police officer can be made to the Chief Constable of the particular police force. Amendments to the *Police Act* passed in 1989 created a new avenue of complaint, to a new Complaints Commissioner, who is employed by the B.C. Police Commission.

177. For refugees, Mental Health Services of the Ministry of Health has provided clinic and rehabilitation services to refugees who have been victims of torture including refugees from Chile and El Salvador.

Article 14: Redress for victim

178. The Ministry of Attorney General is responsible for the *Criminal Injury Compensation Act*, R.S.B.C. 1979, which provides for compensation to victims for a variety of criminal offences. The Schedule to the Act provides a list of these offences, which include assault, assault with a weapon causing bodily harm, aggravated assault, unlawfully causing bodily harm, kidnapping, illegal confinement, and intimidation. In compliance with the Convention, this Schedule will be reviewed to ensure that it can cover all forms of abuse contemplated by the Convention. Adjudication of claims under the Act is carried out by the Workers' Compensation Board. In 1990, a total of 3,957 applications were filed, with awards made in 2,637 cases and over $11 million awarded.

179. In addition to the remedies under the *Criminal Code*, civil remedies are also available to victims of torture.

Article 15: Admissibility of evidence

180. The inadmissibility of evidence obtained by coercion or made as a result of torture is established by case law pursuant to the *Evidence Act*, R.S.B.C. 1979, c. 116.

Article 16: Other acts of cruel, inhuman or degrading treatment

181. The sexual harassment of an employee is not acceptable in British Columbia. Complaints of this nature are accepted under the *Human Rights Act*, S.B.C. 1984, c. 22. Many of the individual ministries of the British Columbia Government also have specific policies prohibiting such harassment of employees by other staff members.

182. Approximately 18.2 percent of cases accepted by the B.C. Council of Human Rights in the fiscal year 1990/91 concerned sexual harassment. In a majority of cases referred to hearing, the Council has ordered payment to the complainant of the maximum $2,000 for humiliation, embarrassment, and injury to self-esteem.

183. In recent years, there has been considerable public concern about incidents of sexual abuse of children by teachers, social workers and other individuals in positions of the trust of children. The government now has a comprehensive policy for criminal records screening, which is undertaken for all individuals applying for positions in the provincial government and/or publicly funded agencies where they would be working with children. The intent of the screening is to identify those who may have abused children previously, and prohibit them from taking such positions.

184. In 1987, the Ministry of Attorney General established a new Victim Assistance Program to provide services to victims of crime. This is a very comprehensive initiative with over 100 programs. The services provided include practical assistance at the scene of the crime, help with filling out forms, emotional support, transportation to and from court, and basic information about the progress of their case, recovery of their property and other administrative details. A toll-free information line is available as well as a victim reparation program. The program is delivered by civilian staff and volunteers attached to local police forces, as well as by staff in sexual assault support centres.

PART FOUR: MEASURES ADOPTED BY THE GOVERNMENTS OF THE TERRITORIES

1. NORTHWEST TERRITORIES

Article 2

185. The operations manual of the Northwest Territories Corrections Service sets out directives which reflect the philosophy of the *Corrections Act*. The manual states that the

philosophy of Corrections Service is based on the belief that all human beings have fundamental rights and freedoms which cannot be affected by race, origin, colour, religion, sex, sexual preference or language. Inmates have the same rights as any other member of society, except for those that are removed by the fact of incarceration. Arbitrary treatment of inmates and lack of respect for their human rights lead to legal liability.

Article 11

186. The *Corrections Act* sets out certain measures to guarantee the rights of inmates.

187. On admission to a correctional centre, every inmate must be provided with full information concerning the rules governing the treatment of inmates and any other information of which the inmate should have knowledge. This must include rules on earnings and privileges of inmates, the making of complaints by inmates, and discipline.

188. The Act stipulates that discipline and order must be maintained in a correctional centre, but with no more restriction than is required for that purpose.

189. The Act also specifies that no employee shall use force unnecessarily with inmates, and, when the application of force to an inmate is required, use more force than is reasonably necessary.

190. Included among the rights guaranteed to inmates under the Act are the right to send a letter or otherwise communicate with people outside the correctional centre, the right to receive visits, and the right to communicate with counsel without the mail being inspected.

191. According to the Corrections Service operations manual, inmates must be informed of their right to refuse medical treatment. When force is necessary, it must only be used to the minimum degree required to control the situation. A limited number of cases is mentioned in which force can be used. The manual stipulates that an inmate can be physically restrained only as a control measure, never as punishment. Inmates may be restrained only under specific conditions--to prevent escape or to prevent them from hurting themselves. With respect to medication restraint, drugs may be used to control an inmate only with the authorization of the Medical Officer and the Corrections Psychologist. Personnel required to use restraint equipment must be trained.

192. The *Mental Health Act* was amended in 1990, and the amendments became effective in March 1992. The Act as amended regulates in the following way the length of the detention under a certificate of involuntary admission and the renewal of this certificate. A patient who is detained under a certificate of involuntary admission may be detained, restrained, observed or examined for not more than two weeks from the time the person is admitted to the hospital under the certificate. This period can be extended to one month under a first certificate of renewal, and one additional month under a second certificate of renewal. A first certificate of renewal must be signed by two doctors. A second certificate must be signed by a doctor and a psychiatrist. Where a medical practitioner is of the opinion that a further extension is required, he will have to apply to a territorial judge.

Article 12

193. According to the operations manual of the Northwest Territories, whenever force is used, the staff member(s) involved must prepare a written report to be submitted to the Warden. The latter must submit a preliminary report to the director of Corrections who will decide whether a more thorough report is necessary.

194. Under the *Mental Health Act*, as modified, when it is necessary to restrain a person who is examined, admitted or detained, the person ordering or applying the restraint shall keep the patient under control by the minimal use of such force. The person must clearly document the use of restraint in the patient's health record by entering the reasons why the patient had to be restrained, a description of the patient's behaviour that made this necessary, and a description of the means of restraint.

Article 16

195. Under the *Mental Health Act*, as modified, a mentally competent person no longer needs to have attained the age of majority to give a valid consent to emergency treatment or to the administration of psychiatric treatments or psychosurgery like lobotomy.

196. The Act as modified introduces the concept of "substitute consent giver" to represent a person who is mentally incompetent. A person may consent on behalf of a voluntary or involuntary patient who has been found to be mentally incompetent to consent, if the person consenting is mentally competent to give a valid consent and is one of the following: a guardian appointed by the court, a representative appointed by the patient, the nearest relative according to the terms of the law or a friend.

197. Again under the *Mental Health Act*, as modified, the patient or, when he or she is not mentally competent, the substitute consent giver, is entitled to examine and copy the patient's health record at the expense of the patient. The administrators of a hospital must apply to the courts to prevent a patient from having access to his or her record. It must prove that disclosing the information is likely to result in harm to the treatment or recovery of the patient, injury to the mental condition of another person, or bodily harm to another person. The patient is entitled to request the correction of information in the record where he or she believes there is an error or omission in the record. He or she can require that a statement of disagreement be attached to the record reflecting any correction that was requested but not made. Finally, he or she can require that notice of the correction or notice of the statement of disagreement be given to any person to whom the record was disclosed within the year before the correction was requested or the statement of disagreement was required.

2. YUKON

Article 2: Legislative ... or other measures

198. Complementing the protections against torture and other cruel, inhuman or degrading treatment or punishment provided in the *Canadian Charter of Rights and Freedoms*, the Canadian *Criminal Code*, the Yukon *Human Rights Act* and specific legislation regarding the RCMP, Corrections Services and mental health institutions in the Yukon, the Yukon has enacted, as previously reported, the *Torture Prohibition Act*, S.Y. 1988, c. 26, which provides a means of civil redress for victims of torture.

199. At the date of this reporting, no cases have been brought under the *Torture Prohibition Act* in the Yukon.

200. Part 6 of the new Yukon *Mental Health Act*, S.Y. 1989-1990, c. 28, specifically delineates patient's rights and affords protection against potential abuses.

201. For corrections officers charged with the custody of offenders in the Yukon, conduct is regulated generally by the *Corrections Act*, S.Y. 1986, c. 36, and more particularly by the "Institutional Policy and Procedures Manual - Whitehorse Correctional Centre". Chapter 12 of the Manual specifically addresses inmates' rights and confirms that no "inmate shall be deprived of human rights except where necessary by due process of law". Section 12 of Part 12 requires that when searches of inmates are mandated they are to be conducted "avoiding undue or unnecessary force, embarrassment, or indignity to the individual".

202. For police officers in the Yukon, standards of conduct are federally regulated by the *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10, as amended.

Article 10: Training of public officials

203. Every recruit to the RCMP receives training on the use of force and on the relevant provisions of the *Canadian Charter of Rights and Freedoms* and the provisions of the *Criminal Code* which prohibit torture.

Articles 12 and 13: Complaints and investigations

204. Inmates of the Whitehorse Correctional Centre have a right, as set out in the "Institutional Policy and Procedures Manual", to have corrections staff facilitate access to such assistance and assist inmates affirmatively in procedures challenging conditions or treatment under confinement.

205. Part 7 of the *Royal Canadian Mounted Police Act* establishes a process whereby members of the public may register complaints concerning the "conduct in the performance of any duty or function under this Act of any member" of the force.

206. To facilitate the complaints process, a Public Complaints Commission has been established, and has been functioning for three years.

207. Nine complaints were registered with the Public Complaints Commission for the 1991-1992 fiscal year from the Yukon.

Article 14: Redress for victims

208. The Yukon's *Torture Prohibition Act* provides in section 1 that every public official, and every person acting at the instigation of or with the consent or acquiesence of a public official, who inflicts torture on any other person commits a tort and is liable and renders his or her employer liable to pay damages to the victim of the torture.

209. At the date of this reporting, no claims have been brought under the above act.

210. Yukon's *Compensation for Victims of Crime Act*, R.S.Y. 1986, c. 27, provides for compensation to victims of crime as defined by the *Criminal Code* and includes compensation to dependants of the victim in certain circumstances.

211. From the date of the first reporting to the present, two cases involving public officials have been brought under the Act, one of which resulted in a finding of abuse and compensation being paid in the amount of $5,500.00.

212. In addition to the general right of a victim in the Yukon to bring a civil suit for compensation in cases of battery, assault, etc., where the victim has died, his or her dependants have recourse under the *Fatal Accidents Act*, R.S.Y. 1986, c. 64, to receive the compensation the victim would otherwise have been entitled to.

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

First supplementary reports due in 1992

Addendum

BELARUS*

[15 September 1992]

1. In the period since the submission in 1989 of the initial report of the Republic of Belarus on implementation of the Convention, the legislation in force in the Republic aimed at the prohibition and elimination of torture and other cruel, inhuman or degrading treatment or punishment has undergone a number of changes.

2. An Act of the Republic of Belarus dated 21 June 1991 amending and supplementing certain legislative instruments has made it no longer possible under article 60 of the Republic's Criminal Code to commit to special medico-educational institutions juveniles in respect of whom a court, pursuant to article 10, finds it appropriate not to apply criminal punishment.

3. An Act of the Republic of Belarus dated 23 April 1992 has revised article 85 of the Criminal Code, which earlier established criminal responsibility for violation of the rules concerning currency transactions. The revised article, which establishes responsibility for violation of the

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* For the initial report of Belarus, see CAT/C/5/Add.14; for its consideration, see CAT/C/SR.32 and 33 and Official Records of the General Assembly, forty-fifth session, Supplement No. 44 (A/45/44), paras. 197-217.

GE.92-14180 (E)

rules concerning transactions involving precious stones and metals, contains lighter penalties than the previous article and does not provide for the death penalty in respect of such offences, even when there are specific aggravating circumstances.

4. Several categories of offences have been decriminalized. This applies, in particular, to malicious violation of the rules concerning administrative supervision (art. 194 of the Criminal Code) and to vagrancy, begging and other parasitic ways of life (art. 204). At the same time, criminal responsibility is established for unlawfully committing a person to a psychiatric hospital (art. 124), for preventing a citizen of the Republic of Belarus, by violence, deception, threats or other means, from freely exercising his right to vote and stand for election and to engage in election campaigning (art. 130) and for violating the law concerning voting of the people (referendum) (art. 131).

5. In view of the increase in racket operations, often accompanied by the use of violence including torture of the victims, article 145 has been revised and now provides heavier criminal penalties for extortion.

6. A new category has been introduced which establishes responsibility for threats against judges or people's assessors, or their close relatives, in connection with the performance of their duties in the administration of justice (art. 172 of the Criminal Code).

7. Changes have been made to article 179, which had already established responsibility for the compelling of a witness or victim to give false testimony or of an expert to give a false opinion.

8. The revised article has increased the penalties for obstructing the appearance of a witness or victim in Court or preventing them from giving testimony, and also for compelling a witness, victim or expert either to refuse to give testimony or an opinion or to give false testimony or opinions.

9. Article 92, paragraphs 1 and 2, of the Code of Criminal Procedure of the Republic of Belarus, concerning maximum periods of detention, as revised by the Act of the Republic of Belarus dated 23 April 1992, provides that detention pending investigation of a case involving a criminal offence may not exceed two months. This period may be extended to three months by the competent procurator if it has not been possible to complete the investigation and there is no reason to alter the restraining measure. A further extension of the period of detention, to up to six months from the date of the arrest, may be authorized by the regional procurator or a procurator of equivalent status only by reason of the particular complexity of the case.

10. An extension of the period of detention beyond six months is permitted in exceptional cases and only in respect of persons charged with grave crimes. The period may be extended in such cases to one year by a deputy Procurator-General of the Republic of Belarus, or to one and half years by the Procurator-General of the Republic of Belarus.

11. To provide additional guarantees of the rights of the suspect or accused, revised article 49 of the Code of Criminal Procedure of the Republic of Belarus stipulates that, in the event of the arrest of a person suspected of having committed an offence or of his detention as a restraining measure prior to presentation of the accusation, defence counsel shall be permitted to

participate in the case from the time that the person is given notice of his arrest or of the order to impose the restraining measure, but no later than 24 hours from the time of the arrest or placement in detention.

12. The list of instances enumerated in article 51 of the Code of Criminal Procedure where the participation of defence counsel is obligatory has been extended. Thus, paragraphs 2 and 3 of this article, as revised by an Act of the Republic of Belarus dated 28 July 1990, make the participation of defence counsel also obligatory during the inquiry proceedings, which was not previously a requirement in the instances provided for in subparagraphs 2, 3 and 4, when the case involves a juvenile, persons who by reason of their physical or mental defects cannot themselves exercise their right to defence or persons who do not have command of the language in which the judicial proceedings are conducted, and in accordance with the procedure provided for by article 49 of the Code of Criminal Procedure of the Republic of Belarus.

13. The person conducting the inquiry, the investigator, procurator or court may furthermore determine that the participation of defence counsel is necessary in other instances, if they consider that the complexity of the case or other circumstances could make it difficult for the suspect, accused or defendant to exercise his right to defence.

14. Decree No. 156 of the Council of Ministers of the Republic of Belarus, dated 24 March 1992, concerning the approval of standards of daily subsistence for persons sentenced to deprivation of liberty and for persons held in isolation cells pending investigation or committed to remedial or rehabilitative labour establishments of the Ministry of Internal Affairs, has revised these standards to provide for their enhancement and alignment with present requirements.

15. The judicial institutions and bodies responsible for the protection of rights in the Republic of Belarus are particularly concerned in their work with questions of the rehabilitation and restoration of the rights of the victims of the illegal political repressions which took place between the 1920s and 1980s.

16. Questions relating to the application of the Convention will be considered during preparation of the legislative acts to be drafted in the course of implementation of judicial and legal reform in the Republic of Belarus.